TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 243.

THE DISTRICT OF COLUMBIA, PLAINTIFF IN ERROR,

vs.

ADOLF CLUSS, FOR THE USE OF JOHN A. J. CRESWELL, ROBERT PURVIS, AND R. H. T. LEIPOLD, COMMISSIONERS OF THE FREEDMAN'S SAVINGS AND TRUST COMPANY.

IN ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED OCTOBER 10, 1878.

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1 *Declaration.*

In the supreme court of the District of Columbia.

ADOLF CLUSS, FOR THE USE OF JOHN A. J. Creswell, Robert Purvis, and Robert H. T. Leipold, commissioners of the Freedman's Saving and Trust Company,
vs.
THE DISTRICT OF COLUMBIA.

The plaintiff sues the defendant for money payable by the defendant to the plaintiff for goods sold and delivered by the plaintiff to the defendant; for work done and materials provided by the plaintiff for the defendant, at its request, and for money lent by the plaintiff to the defendant; and for money paid by the plaintiff for the defendant,
2 at its request; and for money found to be due to the plaintiff from the defendant, on account stated between them, and the plaintiff claims $2,155, with interest from July 24, 1872, according to the particulars of demand annexed hereto, with costs.

ENOCH TOTTEN,
Att'y for Pl'ff.

Notice to plead.

The defendant is to answer hereto on or before the next special term of the court, occurring twenty days after service hereof; otherwise judgment.

ENOCH TOTTEN,
Att'y for Pl'ff.

3 *Particulars of demand.*

The Board of Trustees of Colored Schools of Washington & Georgetown, D. C., to Adolf Cluss, architect, Dr.

Date.		Dollars.	Cents.
July 1872..	To plans, specifications detail, drawings, & superintendence of "Sumner school," including all office expenses, a total charge of 5 % on a cost of $60,000, a round sum	$3,000	
	To arch. services in enlarging O st. School (1871)	100	
	To services on Steven' school	80	
	" " " Lincoln "	75	
		$3,255	
	Rec'd on acc't	1,100	
		$2,155	

I certify that the services above enumerated have been duly rendered as therein stated, and that the articles charged for have been re-
4 ceived by me for the use of the——

Approved by vote of the board on the 24 of July, 1872.

HENRY JOHNSON.
WM. H. A. WORMLEY.
HENRY JOHNSON,
Trustee & President of the Board.

I hereby certify that the within account of Adolf Cluss is correct, and that the prices therein charged was in accordance with agreement made with said Cluss by the trustees of colored schools.

HENRY JOHNSON,
Chairman Sup. Board Colored Schools.

APRIL 1, 1875.

WASHINGTON, D. C., 187 .

Received of John A. Gray, treasurer of the board of trustees of colored schools of Washington & Georgetown, D. C., his check
5 on the Freedman's Savings and Trust Company, of Washington, D. C., numbered , dated , 187 , for two thousand one hundred & fifty-five dollars and cents, in full of the above bill.

ADOLF CLUSS.

(Duplicates.)

The following rules have been adopted by the trustees of schools for colored children of Washington and Georgetown, to be observed by all persons having business with the board:

1. Bills must be accompanied by the certificate of the superintendent, or the janitor or principal of the building in which the services
6 have been rendered, or where the articles have been delivered, to the effect that the services mentioned have been rendered as stated, or the articles charged in the bill have been delivered as stated therein.
2. Bills must be made out in duplicate and upon this form, a supply of which will be furnished those requiring them upon application to the treasurer by mail or otherwise.
3. Every account must state at what school-house the services were rendered or the articles were delivered.
7 4. Receipts for money signed by mark must be attested by the signatures of two persons who can write their names.
5. As accounts cannot be paid until they have been approved by the board, dealers should file their claims with the treasurer on or before the 2d and 4th Wednesdays of each month in order to avoid unnecessary delay in their payment.
6. When in funds bills will be promptly paid on or before the first day of every month.

Endorsement on particulars of demand.

BOARD OF AUDIT, *Jan'y* 4, 1875.

8 Referred to trustees pub. schools for information if within bill is correct & unpaid.

J. M. WILCOX,
for B. of A.

The within claim of Adolf Cluss against the colored schools to the am't of $2,155 has not been paid.
Jan. 11th, '75.

HENRY JOHNSON,
Trustee.

Returned to the hon. board of audit, with the information above set forth by Mr. Johnson.

E. CHAMPLIN,
Chairman Com. Accounts & Supplies.
JOHN H. BROOKS,
Secretary.

9 *Summons.—Issued Ap.* 13, '75.

In the supreme court of the District of Columbia.

ADOLPH CLUSS, USE OF COMMISSIONERS OF Freedman's Saving & Trust Co., plaintiff,
vs.
THE DISTRICT OF COLUMBIA, DEFENDANT. } At law. No. 13983.

The President of the United States to the defendant, greeting:

You are hereby commanded to appear in this court on the first day of its special term, occurring 20 days after service of this writ on you, to answer the plaintiff's suit and show why he should not have judgment against you for the cause of action stated in his declaration.

Witness D. K. Cartter, chief justice.

[SEAL.]

R. J. MEIGS, *Clerk.*
By JOB BARNARD,
Asst. Clerk.

10 NOTE.—The special terms of the court commence on the first Tuesday of every month, except August, in which month there is no term of the court.

ENOCH TOTTEN.

Served copies of the declaration, notice to plead, and this summons on the defendant, John H. Ketchum, one of the Com'r' D. C., the 13 day of April, 1875.

A. SHARP, *Marshal.*

11 *Rule for a better bill of particulars.—Filed Apr.* 15, '75.

In the supreme court of the District of Columbia.

ADOLPH CLUSS, USE OF COM'RS. FREEDMEN'S Savings and Trust Co.,
vs.
DISTRICT OF COLUMBIA. } At law. No. 13983.

The defendant moves the court for a rule upon the plaintiffs to furnish a further and better bill of particulars.

EDWIN L. STANTON,
Attorney for Defendant.

12 *Demurrer.—Filed July* 14, '75.

In the supreme court of the District of Columbia.

ADOLPH CLUSS, USE OF COMMISSIONERS FREEDman Savings & Trust Co.,
vs.
DISTRICT OF COLUMBIA. } At law. No. 13983.

The defendant says that the plaintiff's declaration is bad in substance.

EDW. L. STANTON,
Attorney for the District.

NOTE.—A matter of law intended to be argued upon this demurrer is that the District of Columbia is not liable for the plans, specifications, detail drawings, office expenses, and services specified in
13 the declaration, because the same were furnished and rendered upon and for buildings for colored schools, and the District of Columbia could only pay to the treasurer of the board of trustees of schools for colored children and to no one else the sum or any part of the sum payable by said district for the purpose of establishing and sustaining colored public & schools in said District, and by law a right of action is given to the trustees of schools for colored children and to no one else against said District for the non-payment of any sum of money payable for the purpose aforesaid.

14 *Joinder in demurrer.—Filed Sept.* 3, '75.

In the supreme court of the District of Columbia, the day of , 18 .

CLUSS, USE OF COM'R, &C., PLAINTIFF,
vs.
DIST. OF COLUMBIA, DEFENDANT. } At law. No. 13983.

The plaintiff say' the declaration is good in substance.

ENOCH TOTTEN,
Attorney for Plaintiff.

15 *Note of issue.—Filed Oct.* 1, '75.

In the supreme court of the District of Columbia, the 3' day of Sept., 18 .

BETWEEN ADOLF CLUSS, USE OF COM'RS OF F. S. & Trust Co., plaintiff,
and
THE DISTRICT OF COLUMBIA, DEFENDANT. } At law. No. 13983.

Enoch Totten, attorney for pl't'ff.
Edwin L. Stanton, attorney for def't.

Last pleading filed the 3d day of Sept., 1875.

ENOCH TOTTEN,
For Pl't'ff.

To the clerk.

16 *Demurrer overruled.—Min.* 11, *p.* 208. *July* 8, 1875.

ADOLF CLUSS, USE, &C., PL'T'FF,
vs.
THE DISTRICT OF COLUMBIA, DEF'T. } At law. No. 13933.

Upon arguments of the defendant's demurrer to the plaintiff's declaration, it is considered that said demurrer be, and the same is hereby, overruled.

Appeal prayed to general term by defendant.

17 *Def't appeal to general term.—Filed Jan. 8, '76.*

In the supreme court of the District of Columbia, Jan. 8th, 1875.

CLUSS
vs.
DISTRICT OF COLUMBIA. } At law. No. 13983.

The defendant appeals to the general term from the order this day passed in the above case overruling defendant's demurrer.

EDWIN L. STANTON,
Attorney for Defendant.

18 *Decree in gen'l term.*

Proceedings in general term, Monday, November 6, 1876.

Present, Justices Olin, Wyley, Humphreys, and MacArthur.

ADOLF CLUSS
vs.
DISTRICT OF COLUMBIA. } At law. No. 13983.

And now again come here as well the plaintiff as the defendant, by their respective attorneys, and because it appears to the court that there is no error in the record and proceedings or in the judgment of the circuit court, therefore it is considered that the judgment of the said court, from which the defendant's appeal was presented to this court, and by which judgment the defendant's demurrer to the plaintiff's declaration was overruled be, and the same is hereby, affirmed;
19 and it is ordered that the defendants have leave to plead over within twenty days; and that the same be placed on the calendar when at issue in the order of said issue.

20 *Defendant's pleas.—Filed Nov. 28, 1876.*

In the supreme court of the District of Columbia, the day of November, A. D. 1876.

ADOLF CLUSS, FOR THE USE OF PURVIS ET al., commissioners of the Freedman's Savings & Trust Company,
vs.
THE DISTRICT OF COLUMBIA. } At law. No. 13983.

The defendant says the plaintiff ought not to have and maintain his action against the defendant because, it says:

1. That defendant is not indebted as alleged.

2. That the amount claimed by the plaintiff for his said services is exorbitant and excessive and more than they were reasonably worth.

3. That after the plaintiff did the work and furnished the plan and specifications in the declaration and bill of particulars men-
21 tioned, and before the commencement of this suit, the defendant by and through the treasurer of the board of trustees of colored schools of Washington and Georgetown, District of Columbia, paid to the plaintiff divers sums of money amounting, to wit, to all the sums

of money in the said declaration mentioned in full satisfaction and discharge of all causes and rights of action in said declaration mentioned, which payment the plaintiff accepted of and from the defendant in full satisfaction and discharge as aforesaid, and this defendant is ready to verify.

4. That after the said demand is alleged by plaintiff to have accrued against defendant, the Congress of the United States, by an act
22 entitled "An act for the government of the District of Columbia and for other purposes," approved June 20, 1874, constituted the First Comptroller of the Treasury and the Second Comptroller of the Treasury of the United States a board of audit to examine and audit for settlement certain classes of claims against the District of Columbia, and among others, claims for which no evidence of indebtedness had been issued, arising out of contracts written or oral made by or on behalf of the District of Columbia, and the said plaintiff thereupon presented his said claim or demand in his declaration mentioned, to the said board of audit, for settlement, and the said board of audit duly considered the said claim and passed upon it, and on to wit, the 22d day of March, A. D. 1875, adjudged and found that there was
23 nothing due from the defendant to the plaintiff upon his said claim, and defendant says that such adjudication and settlement by the said board of audit was final and conclusive between the plaintiff and defendant.

5. That at the time when plaintiff alleges said services were rendered the plaintiff was an officer in the employ of the District of Columbia, and held the office of, to wit, inspector of buildings, at an annual salary of, to wit, two thousand dollars, and as such officer, and while holding said office, the plaintiff could not lawfully demand or receive any extra compensation, fee, or allowance from the said District of Columbia, for services rendered to said District.

6. That the contract or agreement of the plaintiff with the de-
24 fendant by reason of which said services were rendered and plans, specifications and drawings furnished by said plaintiff was without express authority of law and null and void.

BIRNEY & BIRNEY.
Attorneys for Defendant.

25 *Joinder in issue.—Filed Dec.* 19, '76.

In the supreme court of the District of Columbia.

ADOLF CLUSS, USE OF THE COMMISSIONERS of the Freedman's Savings & Trust Co., *vs.* THE DISTRICT OF COLUMBIA. } Law. No. 13983.

And now comes the said plaintiff and joins issue on the first and second pleas of the said defendant.

And now comes the said plaintiff and denies the allegations set forth in the third and sixth pleas of the said defendant.

And now comes the said plaintiff and demurs to the fourth and fifth pleas of the said defendant, and for matter of law in support of such demurrer, says that the matters & things set forth in the said fourth and fifth pleas do not constitute a defence to the said cause of action, nor to any part or parcel thereof.

ENOCH TOTTEN,
Att'y for Pl'ff.

26 *Joinder in issue upon replication & on demurrer to def't's 4th & 5th pleas.—Filed Jan. 23, '77.*

In the supreme court of the District of Columbia.

ADOLF CLUSS, USE OF THE COMMISSIONERS of the Freedman's Savings and Trust Co.,
vs.
THE DISTRICT OF COLUMBIA.
} At law. No. 13983.

The defendant joins issue with the plaintiff on his replication to the defendant's third and sixth pleas.

The defendant also says that the fourth and fifth pleas hereinbefore pleaded are good in substance.

BIRNEY & BIRNEY,
Attorneys for Defendant.

27 *Demurrer sustained. Min. 12, p. 300, Feb. 21, 1877.*

ADOLF CLUSS, USE OF COM'R OF F. S. & T. Co., pl't'ff,
vs.
THE DISTRICT OF COLUMBIA, DEF'T.
} At law. No. 13983.

Now comes here as well the plaintiff, by his attorney, Mr. Totten, as the defendant, by its attorney, Mr. Birney, and therefore the case comes on to be heard upon the plaintiff's demurrer to the defendant's fourth and fifth pleas, and the same having been heard, and because it seems to the court that said pleas are bad in substance, the demurrer thereto is sustained, to which the defendant, by its attorney, excepts, and on motion leave is granted defendant to amend his fifth plea, which being done and issue thereon joined, comes a jury of good and lawful men of this District, to wit, Samuel Polkinhorn, J. Brad. Adams, Wil-
28 liam H. Holledge, Daniel Smith, George W. Harkness, Charles W. Pettit, Jarred C. Nichols, George S. Galt, Reuben F. Baker, Charles Kloman, Anthony Gaigler, and Joseph S. Martin, who, being duly sworn to try the issue above joined, are respited until the meeting of the court on Friday next.

Adjourned till ten o'clock Friday morning next.

29 *Amendment of fifth plea.*

In the supreme court of the District of Columbia, this the 21st day of February, A. D. 1877.

ADOLF CLUSS, USE OF PURVIS ET AL., COMmissioners of the Freedman's Savings and Trust Company,
vs.
THE DISTRICT OF COLUMBIA.
} At law. No. 13983.

The defendant, under leave of the court first had and obtained, and reserving its benefit of exception to the order sustaining the demurrer to the fifth plea, amends its said fifth plea in said case by inserting after the words "while holding said office the plaintiff," the following words, "in consideration of the said salary, owed his time & services in

regard to buildings under charge of the District authorities exclusively to said defendant and"

WM. BIRNEY,
Attorney for Defendant.

30 *Joinder of issue to amend 5th plea.—Filed Feb.* 21, '77.

In the supreme court of the District of Columbia.

CLUSS, USE, &C., *vs.* DISTRICT OF COLUMBIA. } Law. No. 13983.

And now comes the said plaintiff and, for replication to the amendment to the plea of defendant this day filed, says that the matters and things therein alleged are not true in manner and form as therein stated.

ENOCH TOTTEN,
Att'y for Pl'ff.

31 *Min.* 12, *p.* 301; *Friday, Feb.* 23, 1877.

FRIDAY, *February* 23, 1877.

Session resumed pursuant to adjournment, Chief Justice Carter, presiding.

ADOLPH CLUSS, USE OF THE COM'R OF F. S. & T. Co., pl'tiff, *vs.* THE DISTRICT OF COLUMBIA, DEF'T.

Now again come here the parties aforesaid in manners aforesaid, and the same jury that was respited on Wednesday last, who, after the case is given them in charge, on their oaths say they find the issue aforesaid in favor of the plaintiff, and that the money payable to him by the defendant by reason of the premises is the sum of two thousand one hundred and fifty-five dollars, with interest thereon from July 24, 1872, besides costs.

32 Therefore it is considered that the plaintiff recover against the defendant two thousand one hundred and fifty-five dollars, with interest as aforesaid, being the money payable by it to the plaintiff by reason of the premises, and $ for his costs of suit, and have execution thereof.

33 *Motion for new trial.—Filed Feb.* 27, '77.

In the supreme court of the District of Columbia.

ADOLPH CLUSS *vs.* THE DISTRICT OF COLUMBIA. } At law. No. 13983.

The defendant moves the court to set aside the verdict rendered in this cause and grant a new trial, and for cause defendant shows—

1st. That said verdict was contrary to law and the evidence in the case.

2d. That the chief-justice presiding committed errors of law in rejecting and admitting evidence and in his instructions to the jury.

BIRNEY & BIRNEY,
Attorneys for Defendant.

34 *Additional cause for motion to set aside verdict.—Filed Feb.* 28, '77.

In the supreme court of the District of Columbia.

ADOLPH CLUSS, USE, &C.,
vs.
THE DISTRICT OF COLUMBIA. } At law. No. 13983.

The defendant, for a further cause why the verdict in this cause should be set aside, says that the amount awarded to plaintiff by said verdict was excessive.

BIRNEY & BIRNEY,
Atty's for Defendant.

35 *Min.* 12, *p.* 379; *Mar.* 31, 1877.

ADOLPH CLUSS, USE, &C., PL'FF,
vs.
THE DISTRICT OF COLUMBIA, DEF'T. } At law. No. 13983.

Upon arguments of so much of defendant's motion for a new trial as is addressed to the discretion of the court, it is considered that the same be and is hereby overruled.

36 *Def't's bill of exceptions.—Filed Apr.* 14, '77.

In the supreme court of the District of Columbia.

Defendant's bill of exceptions.

ADOLPH CLUSS, TO USE OF JOHN A. J. CRESSwell et al., commissioners, &c.,
vs.
THE DISTRICT OF COLUMBIA. } No. 13983. Law.

At the trial of this case the plaintiff, to maintain the issue on his part joined, was sworn on his own behalf, and gave evidence to the jury tending to show that in the year 1870 he was employed by the board of trustees for colored schools to prepare as an architect the plans and specifications for the Sumner school building in the city of Wash-
37 ington, and to superintend the construction thereof. The employment was made orally by the board, and there never was a written contract between plaintiff and the board.

Plaintiff performed all the architectural services rendered on the Sumner school building, and was the only architect employed about it. That plaintiff's charge agreed to by the board of trustees aforesaid was to be, for all his services and expenses, five per cent. upon the cost of the building. That this is the rate of charge adopted by the Institute of Architects of the United States, and the customary charge, and that such charge was a reasonable charge. That the building cost about $66,000, and was fully completed in the spring about the month of

June, 1872, when the plaintiff received from the board of trustees
38 of colored schools the sum of eleven hundred dollars ($1,100) in money, and a voucher in the following form:

The board of trustees of colored schools of Washington and Georgetown, D. C., to Adolph Cluss, architect, Dr.

July, 1872. To plans, specifications, details, drawings, and superintendence of Sumner school including all office expenses, a total charge of five per cent. on a cost of $60,000, in a round sum	$3,000 00
To architect services in enlarging O street school (1871)	100 00
To services on Stevens school	80 00
" " " Lincoln school	75 00
	3,255 00
Received on account	1,100 00
	2,155 00

I hereby certify that the within account of Adolph Cluss is correct, and the prices therein charged was in accordance with agreement
39 made with *with* said Cluss by the trustees of colored schools.

HENRY JOHNSON,
Chairman Sub. Board Col. Schools.

APRIL 1, 1875.

I certify that the services above enumerated have been duly rendered as therein, and that the articles charged for have been received by me for the use of the *

HENRY JOHNSON,
WM. H. S. WORMLEY.

Approved by vote of the board on the 24 of July, 1872.

HENRY JOHNSON,
Trustee and President of the Board.

40 That this voucher was in the usual form of vouchers given by the board of trustees of colored schools, and plaintiff afterwards sold it to the Freedman's Saving and Trust Company. That plaintiff was called upon by the board of trustees of colored schools to superintend repairs of the Lincoln, Stevens, & O street school houses, for which he charged $255.00, which was fair and reasonable.

That the Sumner school building, and the other buildings mentioned, have always been and still are occupied as free colored schools.

That he signed the receipt at the foot of the voucher to enable the savings bank to get the money, and has never been paid by the board of trustees of colored schools, or by the defendant, in any way.

That he was inspector of buildings under the late Board of
41 Public Works of the District of Columbia, from July 10, 1871, to Oct. 19, 1872, and that part of the work on the Sumner school building was done during that time, but that he could not fix the date of the repairs on the other buildings, but supposed it to be in 1870 or 1871.

*Here insert the name of the school for which the articles are furnished; or, if furnished for general use, state for use of the colored schools of Washington and Georgetown, D. C.

That as inspector of buildings his duties were to enforce the building regulations, and to prepare a new building law. And the counsel for the plaintiff then asked witness the following question: "Was there anything said between you and the Board of Public Works about your continuing or discontinuing your private business?" And the witness answered: "It was well understood that it was not to interfere with my private business at all. Therefore the salary was not at all adequate to what I had to do. The inspector of buildings was to have nothing official to do" with the erection of public buildings.

42 To which question and answer the defendant, by its attorney at the time the said question was asked and the said answer made, then and there objected, but the justice presiding at the trial overruled the objection and permitted said question to be asked and answered; to which overruling and permission the counsel for the defendant then and there excepted, and the exception was noted by said justice upon his minutes, and said counsel requested said justice to put his seal to this his first bill of exceptions, which is done now for them this 14th day of April, A. D. 1877.

D. K. CARTTER,
Chief Justice.

43 After the signing and sealing of defendant's first bill of exceptions, which is made part hereof, Robert Fleming, a witness sworn on behalf of the plaintiff, testified and gave evidence tending to show that he was the contractor for the erection of the Sumner school building, and that the specifications and plans were prepared and the erection of the building superintended by the plaintiff at the request of Mr. Syphax and Mr. Wormley, two of the three members of the board of trustees of colered schools, and the price charged by plaintiff was reasonable; and the witness was then asked by the counsel for the plaintiff the following question:

Was there any bargain to your knowledge with Mr. Cluss as to what he was to be paid for preparing these plans, specifications, and drawings? I wish you would state all that happened in regard to that point.

44 To which question the defendant, by its counsel, then and there and before the same was answered, objected; but the justice presiding at the trial overruled the objection and permitted the witness to answer the question; to which overruling and permission the defendant by its counsel then and there excepted, and the exception was noted by said justice upon his minute*d*, and said counsel requested said justice to put his seal to this his second bill of exceptions, which is done now for them this 14th day of April, 1877.

D. K. CARTTER,
Chief Justice.

45 After the signing and sealing of the defendant's second bill of exceptions, which is made part hereof, Henry Johnson, a witness sworn on behalf of the plaintiff, testified and gave evidence tending to show that in the years 1871 and 1872 he was chairman & secretary of the board of trustees of colored schools; that the voucher set forth in the defendant's first bill of exceptions was presented to the board of trustees of colored schools and was passed and approved by them, and that it was then transmitted to the plaintiff; but upon cross-examination by counsel for defendant, the witness testified that a record was kept of all the proceedings of the board of trustees aforesaid, and

that said record was still in existence, and that such record would show that a vote was taken on the plaintiff's bill; whereupon the defendant, by its counsel, moved the justice presiding at the trial to rule out and exclude from the jury all the testimony given by the witness concerning the official transactions of said board of trustees, but the said jus-
46 tice refused the said motion; to which refusal the counsel for the defendant immediately excepted, and the exception was noted by said justice upon his minutes; and said counsel requested said justice to put his seal to this his third bill of exceptions, which is done now for them this 14th day of April, 1877.

D. K. CARTTER,
Chief Justice.

After the signing and sealing of the defendant's third bill of exceptions, which is made part hereof, the witness, Henry Johnson, before named, gave further testimony tending to show that he had no recollection of the proceedings of said board of trustees of colored schools, but that without the direction of the board he would not have ap-
47 proved the bill presented by plaintiff; that the said board in the years 1871 and 1872 had no official connection with the municipal authorities of the District of Columbia.

And the plaintiff gave further evidence tending to show that bills for services rendered to the board of trustees of colored schools were usually paid by the treasurer of the board, and that plaintiff's bill was not paid because of a lack of funds, and that the voucher set out in defendant's first bill of exceptions was in the usual form of vouchers issued by the said board, that the proceedings of the board of trustees of colored schools were usually recorded, but this voucher was inadvertently omitted, and that the plaintiff's bill had never been paid, or any part thereof, except as to $1,100, for which credit had been given.

And there the plaintiff rested.

48 And thereupon the defendant gave evidence tending to show that there is not upon the records books of the board of trustees of colored schools any record of the contract alleged by the plaintiff to have been made by him with the said board, or any record of the passage and approval by the said board of the plaintiff's bill; that the board of trustees of colored schools was abolished by order of the Commissioners of the District of Columbia in August, 1874, and a new board organized, of fifteen members, controlling all the public schools in said district; that said board retains the records of the former boards; that prior to March 3d, 1873, there was no intervention by the District authorities with the board of trustees of colored schools.

That there was a discussion in the board of trustees at the time the plaintiff was employed about his compensation, and some mem-
49 bers of the board refused to accede to a charge of 5 per cent. on the cost of the Sumner building or to any charge greater than two and a half per cent., and the defendant, by its attorney, then offered to prove in evidence that the plaintiff voluntarily submitted his claim to the board of audit created by the act of Congress, approved June 20, 1874, entitled "An act for the government of the District of Columbia, and for other purposes," and that said board adjudged that plaintiff was not entitled to any money from the defendant beyond $1,100 already paid to him, to which offer of evidence the plaintiff by his attorney objected, and the justice presiding at the trial sustained said objection and refused to permit the defendant to introduce such evi-
50 dence; to which refusal the counsel for the defendant then and there

excepted, and the exception was noted by said justice upon his minutes, and said counsel requested said justice to put his seal to this his fourth bill of exceptions, which is done now for them this 14th day of April, 1877.

D. K. CARTTER,
Chief Justice.

And after the signing and sealing of the defendant's further bill of exceptions, which is made part hereof, the defendant rested.

And the plaintiff then gave further evidence tending to prove that the price agreed to be paid by the members of the board of trustees who employed the plaintiff was five per cent. on the whole cost of the Sumner school building for the plans and specifications and super-
51 intendence of the work on said building; that such agreement was ratified by the board of trustees, and communicated to plaintiff and was understood by all parties.

And the plaintiff also offered in evidence an act of the legislative assembly of the District of Columbia, entitled "An act making appropriations to defray the ordinary and contingent expenses of the several department' of the government of the District of Columbia," approved August 23, 1871, also an act.

And here the plaintiff rested.

And thereupon the court, at the instance and request of the plaintiff's counsel, instructed the jury as follows:

52 "If you shall find from the evidence that the plaintiff, Adolph Cluss, was employed by the board of trustees of the colored schools for the cities of Washington and Georgetown to prepare the plans and specifications and detail drawings for the Sumner school building in the city of Washington and also the superintending the construction thereof, and also to perform the particular services mentioned in his account, and that after he had completed the work he was so employed to do he rendered the said board the account therefor (exhibited in evidence), and that said board of trustees did thereupon and on the 24th day of July, 1872, acquiesce in the said account and approved the same, the said account became an account stated, and was and is binding and conclusive upon the defendant upon said approval, and it cannot
53 be avoided or set aside in this case by the defendant, unless the jury find from the evidence that there was an error, mistake, or fraud entering into it, and the burden of proving error, mistake, or fraud rests upon the defendant."

To which instruction the counsel for the defendant excepted before the giving of the verdict, and the exception was noted by said justice upon his minutes, and said counsel requested said justice to put his seal to this his fifth bill of exception, which is done now for them this 14th day of April, 1877.

And after the signing and sealing of the defendant's fifth bill of exceptions which is made part hereof the counsel for the defendant requested the court to instruct the jury as follows:

54 "The District of Columbia, as a municipal corporation, went into operation June 1, 1871, and if the jury believe from the evidence that the contract under which plaintiff claims was made prior to that date, the defendant is not liable upon said contract, unless it subsequently made itself liable by law."

But the justice presiding at the trial refused to give said instruction, to which refusal the counsel for the defendant excepted before the giving of the verdict, and the exception was noted by said justice upon

his minutes, and said counsel requested said justice to put his seal to this his sixth bill of exceptions, which is done now for them this 14th day of April, 1877.

D. K. CARTTER,
Chief Justice.

55 After the signing and sealing of the defendant's sixth bill of exceptions, which is made part hereof, the counsel for the defendant requested the court to instruct the jury as follows:

"A municipal corporation cannot be held liable for the unauthorized acts of its agents, although under color of office, without some corporate act of ratification or adoption, and as the plaintiff has failed to show any antecedent, express authority of law for the contract under which he claims, or any subsequent corporate ratification or adoption, he cannot recover in this suit."

But the justice presiding at the trial refused to give said instruction, to which refusal the counsel for defendant excepted before the giving of the verdict, and the exception was noted by said justice upon

56 his minutes, and said counsel requested said justice to put his seal to this his seventh bill of exceptions, which is done now for them this 14th day of April, 1877.

D. K. CARTTER,
Chief Justice.

And after the signing and sealing of the defendant' seventh bill of exceptions, which is made part hereof, the counsel for the defendant requested the court to instruct the jury as follows:

"There is no statute of Congress or of the legislative assembly authorizing the board of trustees of colored schools to make any contract with any person in behalf of the District of Columbia for architectural or other services in connection with the buildings for colored schools, and there is no such statute ratifying on behalf of the District the

57 contract claimed by plaintiff to have been made, and no liability for services rendered can attach to defendant upon the ground of implied contract; the plaintiff cannot recover."

But the justice presiding at the trial refused to give said instruction, to which refusal the counsel for the defendant excepted before the giving of the verdict, and the exception was noted by said justice upon his minutes; and said counsel requested said justice to put his seal to this his eight' bill of exception, which is done now for them this 14th day of April, 1877.

D. K. CARTTER,
Chief Justice.

And after the signing and sealing of the defendant's eight' bill of exceptions, which is made part hereof, the counsel for the defendant requested the court to instruct the jury as follows:

58 "The board of trustees of colored schools was not placed under control of the corporate authorities of the District of Columbia until March 3, 1873, and had no authority, expressed or implied, prior to that date, to act as the agents of said District in making contracts, and as the plaintiff's testimony does not show any contract on or subsequent to that date, he cannot recover in this suit unless a subsequent ratification by Congress or the District is shown to the satisfaction of the jury."

Which instruction was granted, and the counsel for the defendant requested the court to further instruct the jury as follows:

"Persons dealing with the agents of a municipal corporation must at their peril take notice of the limits of the powers conferred on
59 the municipality, and all those who assume to act as their agents and officers; and in 1870, 1871, and 1872 the powers of the board of trustees of colored schools did not extend to bind the District of Columbia without its express assent by law in a contract for the erection of a building."

But the justice presiding at the trial refused to give said instructions, to which refusal the counsel for the defendant excepted before the giving of the verdict, and the exception was noted by said justice upon his minutes, and said counsel requested said justice to put his seal to this his ninth bill of exceptions, which is done now for them this 14th day of April, 1877.

D. K. CARTTER,
Chief Justice.

Settled by counsel.

ENOCH TOTTEN,
For Pl'ff.
W. BIRNEY,
Att'y for Defendant.

60 *Opinion of the court by Justice Humphreys.*

Supreme court of the District of Columbia, January term, 1878.

ADOLF CLUSS, USE OF FREEDMAN'S SAVings and Trust Company,
vs.
DISTRICT OF COLUMBIA.

Opinion of court by Justice Humphreys.

There is no doubt or controversy in this case but that Adolf Cluss did the work on the building and for the benefit of the people designated by the statute for the purpose and objects of the donation made by act of Congress.

The plaintiff did the work for some one, and some one is responsible and liable to him for the amount to which he is entitled.

The court below charged the jury to find the facts. How else can we proceed?

61 The jury found the facts, and we think that there is no error in the rulings of the chief justice as to the strict rules of law.

No person or body can be sued at law, except the District of C[illegible] bia.

[illegible]laintiff [illegible]l, Rob't nothing to do. and Trust

We therefore affirm the judgment of the circuit court. 1878.

Second MacArthur, 489, where the authorities are collec[illegible] cited and referred to.

62 *G. T., p.* 149.—*Decree in general term.*

FRIDAY, *February* 8, 1878.

Present, Justices Olin, Humphreys, and MacArthur.

ADOLPH CLUSS, USE, &C., PL'T'FF,
vs.
THE DISTRICT OF COLUMBIA. } At law. No. 13983.

And now again come here as well the plaintiff as the defendant, by their respective attorneys, and thereupon because it appears to the court that there is no error either in the proceedings of the circuit court in this cause or in its judgment, therefore it is considered that the said judgment be, and the same is hereby, affirmed with costs, notwithstanding the defendant's exceptions to the rulings of the circuit court and the defendant's motion for a new trial, and that the plaintiff have execution of said recovery.

63 UNITED STATES OF AMERICA, *ss :*

The President of the United States to the chief justice and justices of the supreme court of the District of Columbia, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said court before you, between Adolf Cluss for the use of John A. J. Creswell, Rob't Purvis, and Robert H. T. Leipold, commissioners of the Freedman's Saving and Trust Company, vs. The District of Columbia, at law No. 13983, a manifest error hath happened to the great damage of the said defendant, as by its complaint appears; and it being fit that the error, if any hath happened, should be duly corrected, and full and speedy justice done to
64 the parties aforesaid in this behalf, therefore you are hereby commanded, if judgment be therein given, under your seal, distinctly and openly, to send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States together with this writ, so that you have the same at Washington, on the second Monday of October next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the
65 United States, this first day of March, in the year of our Lord 1878, and of the Independence of the United States the 102nd.

(Signed) R. J. MEIGS, *Clerk, &c.*

DISTRICT OF COLUMBIA, *to wit :*

eption
quested
58

lf Cluss, for the use of John P. J. Cresswell, Robert Purvis, and
H. T. Leipold, commissioners of the Freedman's Savings &
ompany:

controereby cited and admonished to be and appear at a Supreme
until March 3, United States to be holden at Washington on the second
that date, to a tober next, pursuant to a writ of error filed in the clerk's
as the plaintiff's reme court of the District of Columbia, wherein the
to that date, he c Columbia is plaintiff and you are defendant, to show
cation by Congres y there be, why the judgment in the said writ of error
jury."

mentioned should not be corrected, so that speedy justice be done the parties in that behalf.

Witness D. K. Cartter, chief justice of the said supreme court of the District of Columbia.

I received a copy of the above this 23 day of March, 1878.

ENOCH TOTTEN,
Att'y for Pl'ff.

67 AUTHENTICATION OF RECORD.

Clerk's certificate.

CLERK'S OFFICE,
Supreme Court of the District of Columbia:

I, R. J. Meigs, clerk of the said court, do hereby certify that the writings annexed to this certificate are true copies of originals on file and of record in said office, and that said originals together constitute the record of the proceedings of said court in this cause.

Witness my hand and the seal of said court this 4th day of October, 1878.

[SEAL.]

R. J. MEIGS, *Clerk,*
By M. A. CLANCEY,
Assistant Clerk.

Justice's certificate.

I, David K. Cartter, chief justice of said court, do certify the foregoing attestation by R. J. Meigs, clerk of the said court, to be in due form.

Witness my hand and seal this 4th day of Oct., 1878.

[SEAL.]

D. K. CARTTER,
Chief Justice.

Clerk's certificate to justice's official character.

I, R. J. Meigs, clerk of said court, hereby certify that David K. Cartter, whose genuine signature is subscribed to the foregoing certificate, was, at the time of signing and attesting the same, chief justice of said court, duly commissioned and qualified.

Witness my hand and the seal of said court this 4th day of October, 1878.

[SEAL.]

R. J. MEIGS, *Clerk,*
By M. A. CLANCEY,
Assistant Clerk.

(Indorsement on cover:) No. 243. The District of Columbia, plaintiff in error, vs. Adolph Cluss, for the use of John A. J. Creswell, Rob't Purvis, R. H. T. Leipold, comm'rs of the Freedman's Savings and Trust Company. Dist. of Columbia sup. ct. Filed 10th October, 1878.

REC. 243—2

Supreme Court of the United States.

October Term, 1880.

THE DISTRICT OF COLUMBIA
vs.
CLUSS, FOR THE USE, &C.
} At Law, No. 243.

In Error to the Supreme Court of the District of Columbia.

BRIEF FOR THE DISTRICT.

A. G. RIDDLE,
Attorney for the District of Columbia.

Globe Job Print.

Supreme Court of the United States.

October Term, 1880.

THE DISTRICT OF COLUMBIA
vs.
CLUSS, FOR THE USE, &C.
} At Law, No. 243.

In Error to the Supreme Court of the District of Columbia.

BRIEF FOR THE DISTRICT.

Action of assumpsit for work and labor in and about the erection of a school house, built for the trustees of colored schools of Washington and Georgetown. (The Sumner school house in Washington.)

Pleas general issue, and several special pleas, the fourth of which was, that the plaintiffs below had submitted their claim to the "Board of Audit," created by the act of June 20, 1874, which finally passed upon it, and that the plaintiffs below were concluded by it.

To this plea the court sustained a demurrer. (Rec., p. 6.)

On the trial the defendant below offered to prove that the plaintiffs below did submit their claim to said board of audit, which disallowed it, and the court sustained the objection to said evidence, and the District excepted. (Rec., p. 12.)

The court was requested by the District to instruct the jury that if the contract was made prior to Feb. 21, 1871, (the date of the organic act of the District,) the District was not liable, which was refused and exception taken. (Rec., p. 13.)

Verdict and judgment for the plaintiffs below.

ASSIGNMENT OF ERRORS.

The court erred in each ruling as above.

THE TRUSTEES OF COLORED SCHOOLS.

The act of May 21, 1862, set apart a percentage of the school fund, and directed the Board of Trustees of Public Schools to establish schools for colored children.

12 Stats., p. 407.

The act of July 11, 1862, created a special Board of Trustees, and transferred their duties imposed by the foregoing act to it. Under these two acts, the Trustees of Colored Schools had the same powers as the regular Board of Trustees of Public Schools.

The act of June 25, 1864, "to provide for the instruction of youth in the county of Washington, (the District outside the two cities) and for other purposes," changed the law in reference to the education of colored children of the cities.

The 18th section required the municipal authorities of the cities to set off to the Trustees of Colored Schools a *pro rata* share of the school funds.

13 Stats., p. 191.

The act of July 29, 1866, donates certain lands to the Trustees of Colored Schools for the use of the schools.

14 Stats., p. 343.

I find no other act of Congress bearing on this matter of the rights, powers and duties of the Trustees of Colored

Schools till the act of March 3, 1873, (17 Stats., p. 619; Rev. Stats. D. C., p. 34,) which was subsequent to the date of the contract, and the accruing of the rights of parties to this suit.

The plaintiff below was employed in 1870. (Rec., p. 9.)

There could be no District legislation until after the new District government should go into effect, under the act of Feb. 21, 1871. (17 Stats.)

POINTS.

First. If the trustees had power to bind any municipality, it must have been the corporation of Washington. The school house on which the plaintiff rendered service was the Sumner school house, in the city of Washington. (Rec., p. 9.)

The District of Columbia is not liable for the debts of the city of Washington.

Sec. 95, Rev. Stats. D. C., p. 15.

This question is made under the 6th exception, p. 13.

Second. The court erred in overruling the 4th plea, p. 6.

The Board of Audit, to which the plaintiffs below referred their case, was a regularly constituted tribunal, and its decisions conclusive of all rights submitted to it.

18 Stats., secs. 6 and 7, p. 119.

In support of these two propositions I cite—

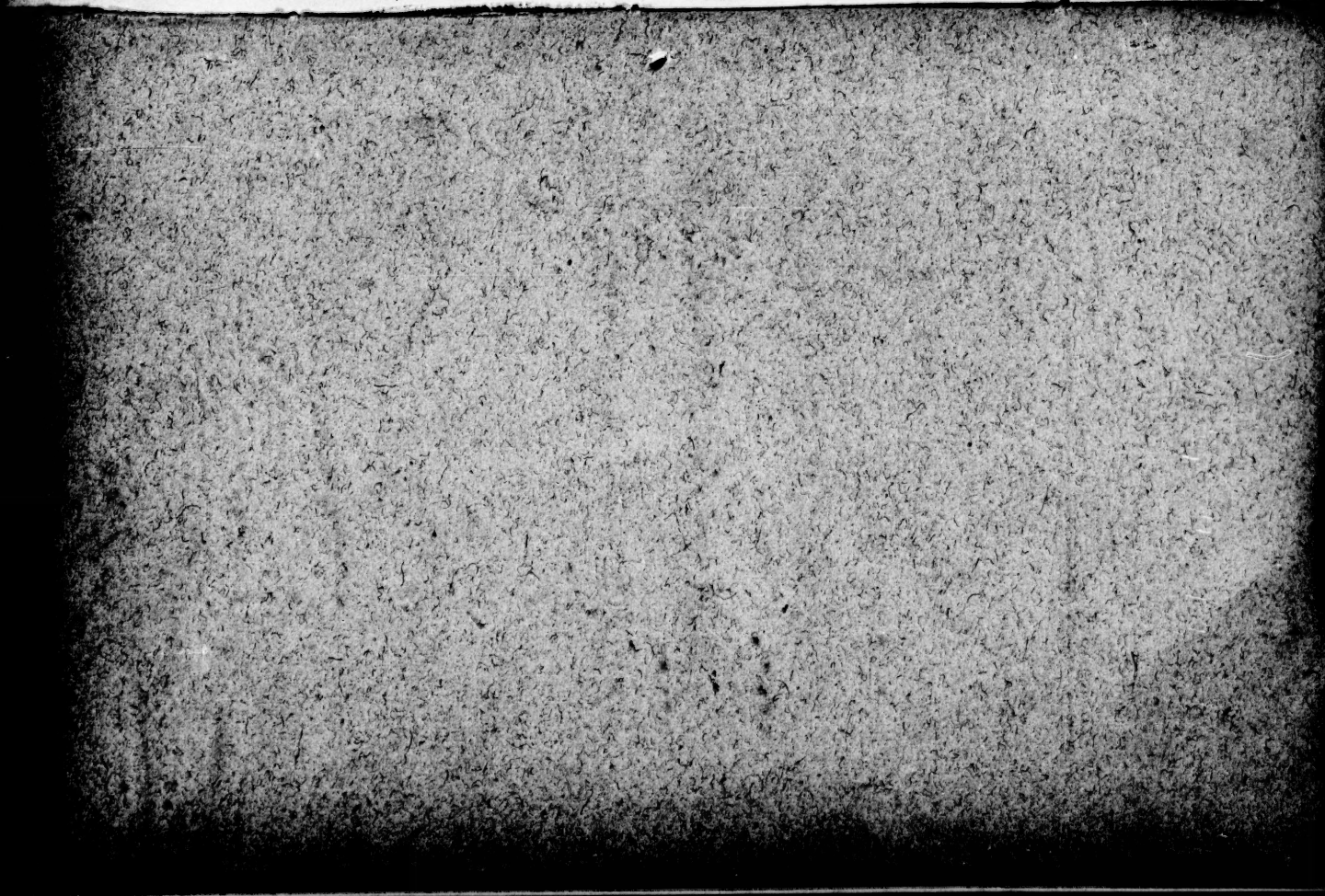
Savage vs. The United States, 2 Otto, 382.
Adams vs. The United States, 7 Wall., 463.
Child's Case, 12 Wall., 232.
Mason's Case, 17 Wall., 67.
Sweeny's Case, 17 Wall., 75.

Third. By the same reasoning, and supported by the last authorities, the defendant below was entitled to make proof

that the plaintiffs below did submit their said claim to the Board of Audit, and this under the plea of the general issue. 1st Chitties pleading, p. 478 (11th Am. Edition.)

It is submitted that all of these points are well taken, and the judgment must be reversed.

A. G. RIDDLE,
Attorney, D. C.



IN THE

Supreme Court of the United States.

No. 243.—October Term, 1880.

DISTRICT OF COLUMBIA

vs.

ADOLPH CLUSS, USE OF, &c.

Brief for Defendant in Error.

ENOCH TOTTEN,

Attorney for Defendant in Error.

J. L. Pearson, Printer, 9th and D sts., Washington.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1880.

DISTRICT OF COLUMBIA
vs.
ADOLPH CLUSS, USE OF, &C.
No. 243.

Brief for Defendant in Error.

This action was brought to recover $2,155.00 for work done by the plaintiff for the defendant in 1871 and 1872, on the "Sumner" school-house, and other school-houses in the city of Washington upon the employment of the board of trustees of colored schools.

The declaration contains the ordinary money counts in the form prescribed by the rules of the court below. To this declaration the defendant pleaded (1) that it was not indebted as alleged, (2) that the amount claimed was excessive, (3) that the account had been paid, (4) that the plaintiff had submitted the claim to the "board of audit" of the District of Columbia, organized under the act of Congress of June 20th, 1874, and that the claim was by said board rejected, which was conclusive, (5) that the plaintiff at the time his alleged services were rendered was an officer of the District government, receiving an an-

nual salary, and that he could not lawfully demand or receive any other fee or allowance from the District for services, and (6) that the agreement upon which the services were rendered was without express authority of law and void. Issue was joined on the first, second, third, and sixth pleas. To the fourth and fifth pleas the plaintiff demurred. On the trial the court sustained the said demurrers, and the case proceeded, and a verdict was rendered by the jury in the favor of the plaintiff for $2,155.00, with interest from July 24, 1872.

Statement of Facts.

The board of trustees of colored schools for the District of Columbia, in the year 1870, by a verbal agreement, employed the plaintiff, who is an architect, to prepare the plans and specifications for the "Sumner" school-building in this city, and to superintend the construction thereof. For these services it was agreed that he should be paid five per centum on the cost of the structure; this was the usual and customary rate, and a reasonable charge for such services.—(9.)

In June, 1872, the building was completed, having cost about $66,000.00. The board of trustees about that time made a settlement with the plaintiff, and paid him the sum of $1,100.00 in cash, and made and issued to him a formal authenticated voucher for the sum of $2,155.00, being in the usual form of vouchers used by said trustees. The plaintiff having rendered some services about the repairs of other school-buildings of the value of $255.00, that amount was included in the settlement and in the voucher. The plaintiff signed a blank receipt at the foot of the voucher to enable the holder to collect the amount due, and then sold and delivered it to the Freedman's Savings and Trust Company. No part of the account as declared upon has ever been paid. This voucher was made out and submitted to the board of trustees, and was approved and passed by them, and was then given to the plaintiff. A

record of the proceedings of the board of trustees of colored schools was usually kept, but through inadvertence none was made of this settlement, and no entry made showing that this particular voucher had been issued.

There was no record made of the said agreement with the plaintiff.

Under the authority of the act of Congress of June 20, 1874, the Commissioners of the District of Columbia abolished the board of "colored" schools, and organized a board of fifteen members to take charge of all the public schools, whether for white or colored children.

The "Sumner School-House" and the other buildings upon which the plaintiff performed his work have always been, and now are, used and occupied by the defendant as free colored schools.—(12.)

The plaintiff was inspector of buildings under the late Board of Public Works of the District, from July 10, 1871, to October 1, 1872, and part of the work on the "Sumner" building was performed by the plaintiff during that time, but it was the understanding when he was employed as such inspector, that his official duties should not interfere with his private business, and he was not to have any official duties connected with the erection of public buildings.

The jury rendered a verdict for the plaintiff for the amount of the voucher, with interest, and thereupon the defendant's counsel tendered his bill of exceptions. On appeal, the general term affirmed the judgment.

Points and Authorities.

The following references show the legislative history of the schools for colored people in this District:

By an ordinance of the corporation of Washington, passed Nov. 12, 1858, the mayor was required to appoint a board of trustees for the management of all the public schools in this city.—(Webb's Digest, 320.) This was the beginning of the board of trustees. By the act of Congress of

May 21, 1862, (12 Stat., 407,) ten per centum of the taxes levied upon the property of persons of color in the cities of Washington and Georgetown was required to be set aside for the purpose of initiating a system of primary schools for the education of colored children, and the board of trustees of public schools was charged with the care and disbursement of the fund. Said board was also required "to provide suitable rooms and teachers for such number of schools as . . . will best accommodate the colored children" in said cities. The third section of said act clothes the said board of trustees with the same power over colored schools as they then possessed over the public schools by virtue of the laws and ordinances of the city.

By the act of Congress of the 11th of July, 1862, the power over colored schools given by the said act of May 21, 1862, was taken away and given to three persons, who are named in the act, and their successors, who were thereby "created a board of trustees," to "possess all the powers and perform all the duties conferred upon and required of the trustees of public schools" of the cities of Washington and Georgetown. The act provided that the successors of the persons named should he appointed by the Secretary of the Interior.

The act of Congress approved July 23d, 1866, (14 Stat., 216,) requires the cities of Washington and Georgetown to pay over to the trustees of the colored schools of said cities, such a proportion of the funds received or expended for educational purposes, including the cost of sites, buildings, improvements, furniture, and books as the colored children bear to the whole number of children.

The act of February 21, 1871, (16 Stat., 419,) created a corporation for municipal purposes called "The District of Columbia." The thirteenth section of this act provides that "no money shall be drawn from the treasury of the District except in pursuance of an appropriation made by law," and the eighteenth section enacts that the legislative power of said corporation "shall extend to all rightful sub-

jects of legislation within said District." The legislative assembly is enjoined by the twenty-third section, "to maintain a system of free schools. By the terms of this organic act the charters of the two cities expired June 1, 1871, and all offices of said corporation were abolished at that date.

By the act of the legislative assembly of the District of Columbia approved, Aug. 23, 1871, (Laws, 108,) a general tax of $1.70 on each one hundred dollars was imposed upon the property of the inhabitants of the District "for the support of the public schools, including colored schools, and for the erection of school-houses."

By the act of the same legislature, approved Aug. 23, 1871, (Laws, 141,) the sum of $146,390.98 was appropriated for the support of colored schools, and the act contains a proviso "that there shall be deducted and retained out of the above amount a sum sufficient to pay all existing and unpaid claims heretofore created for the construction and furnishing of school-houses for the use of said colored schools."

By the act of the assembly of Aug. 23, 1871, "all laws and ordinances" . . . in relation to public schools are continued in force, and the manner of paying the accounts of the board of trustees of public schools is prescribed.—(Laws, 156–7.)

By the act of Congress approved March 3, 1873, the board of trustees of colored schools is increased to nine members, to be appointed by the governor of the District, and a treasurer was provided for, who was charged with the duty of disbursing all the money under the control of the board according to the laws of Congress and the acts of the assembly governing the disbursement of moneys appropriated for the support of the public schools of Washington and Georgetown.

Commissioners for the government of the District were provided for by the act of June 20, 1874, (18 Stat., 116,) with the same powers as were possessed by the governor

and Board of Public Works. They are authorized to abolish any office, to consolidate two or more offices, remove from office, and make appointments to any office authorized by law. They are expressly authorized by the act to apply the revenues of the District to the support of the public schools.

The defendant's counsel reserved nine different exceptions, which appear in the record.

The first exception was taken because of a question put to the nominal plaintiff who rendered the services, in regard to his employment by the Board of Public Works as inspector of buildings. It is difficult to perceive how this and the answer to it could in any way have been prejudicial to the defendant's rights. No instruction was asked for by the defendant upon this special employment, and there is no statute forbidding, and there is no reason or principle prohibiting these two kinds of employment at the same time.—(See United States vs. White, Taney's Decs., 152; also R. R. Co. vs. Smith, 21 Wall., 261.)

The second exception is still more easily disposed of; it does not appear whether the answer of witness to the question was for or against the defendant. If it was not against it, there can be no error. A party to an action at law cannot assign error upon that which hurts him not.—(Railroad Co. vs. Smith, 21 Wall., 261; Packet Co. vs Clough, 20 Wall., 528.)

The third exception of the defendant is based upon the idea that the proceedings of the board of trustees of colored schools must necessarily be a matter of record, and that extrinsic evidence cannot be considered. This is an erroneous idea; while it is usual, and doubtless, very proper for the proceedings of such bodies to be recorded, it is not necessary that they should be. The absence of a record cannot invalidate an agreement, and more especially in a case of this character, where the defendant has entered

upon the property and used it, and thus accepted the benefits of the defendant's labor. The proof shows, that the trustees usually recorded their proceedings, but that by mistake or inadvertence, no entry was made of this voucher. The voucher itself was the best record of this transaction, and even if the fact that the voucher had been issued, had appeared upon the record of the proceedings, such record would have been only secondary evidence. The law did not require this board to record its proceedings.—(As to the weight as evidence of the records of a corporation, see Town of Concord vs. Concord Bank, 16 N. H., 26; Cabot vs. Given, 45 Me., 144; Hamilton vs. R. R. Co., 9 Ind., 359; Hankins vs. Shouf, 2 Cart. (Ind.), 342.) In this case the board of trustees was only an agent of the municipal corporations; it was not required to make records of its proceedings, and consequently, its records possess not even the slight weight accorded to those of a regularly incorporated company.

The offer of evidence by the defendant to prove that the plaintiff had submitted his account to the board of audit, was properly rejected, and this furnishes the ground for the fourth exception. At this late day, it will hardly be contended that the board of audit possessed any judicial powers. The judicial power of the United States is vested in one Supreme Court and such inferior courts as Congress may establish. This "board" was not a court, and its proceedings and determinations are entitled to no other or further authority or respect than the action of any other accountant. If the board of audit had made an award and the plaintiff had accepted the money, the authorities cited for the plaintiff in error might have been applicable.

The fifth exception was taken to the granting of the first prayer of the plaintiff, on the subject of the conclusiveness of an account intelligently stated by the parties themselves, where there has been no error, mistake, or fraud. The enforcement of this well-settled doctrine was peculiarly proper in this case; the account was stated and

certified in a formal manner by the trustees of the colored schools; it then became a subject-matter of trade and traffic, as may all paper which has been issued by a municipal corporation. This voucher has been purchased as an investment by the trustees of the Freedman's Savings and Trust Company. That the law was well laid down in the instructions objected to, there can be no serious doubt. It is sustained by all the authorities.—(Vedder vs. Vedder, 1 Denio, 260; U. S. vs. Childs, 12 Wall., 242; Savage's Exr. vs. U. S., 2 Otto, 382.)

The sixth, seventh, eighth, and ninth prayers asked for by the defendant's counsel were properly rejected. The defendant obtained, in the prayer granted as set out in the ninth exception, much more than he was legally entitled to have.

By the act of Congress creating the municipal corporation, it is provided that the District of Columbia shall be the "successor" of the old corporations, and it is expressly declared that "all the property of said corporations, ... shall become vested in the said District of Columbia."—(16 Stat., 419.)

It was further provided by that act that the three old corporations, then existing, should be consolidated into one, with substantially the same powers; the fortieth section of that act contains the following provisions, to wit:

"Sec. 40. *And be it further enacted*, That the charters of the cities of Washington and Georgetown shall be repealed on and after the first day of June, anno domini eighteen hundred and seventy-one, and all offices of said corporations abolished at that date.

"The Levy Court of the District of Columbia and all offices connected therewith shall be abolished on and after the said first day of June, anno domini eighteen hundred and seventy-one; but all laws and ordinances of said cities, respectively, and of said Levy Court, not inconsistent with this act, shall remain in full force until modified or repealed by Congress or the legislative assembly of said District.

"That portion of said District included within the present limits of the city of Washington shall continue to be known as the city of Washington, and that portion of said District included within the limits of the city of Georgetown shall continue to be known as the city of Georgetown.

"And the legislative assembly shall have power to levy a special tax upon property, except the property of the government of the United States, within the city of Washington, for the payment of the debts of said city; and upon property, except the property of the government of the United States, within the limits of the city of Georgetown, for the payment of the debts of said city."

This statute expressly continues in force the ordinances of these corporations, and grants to the new and consolidated corporation power to levy taxes upon the property within the corporate limits of the two cities, for the debts due from them respectively. This grant of the power of taxation for this purpose carries with it the corresponding obligation *to pay* those debts. The power and duty are inseparable and co-extensive.—(Smith vs. Corp. of Washington, 20 How., 135; Weightman vs. Corp. of Washington, 1 Black, 50.)

By force of these provisions of positive law, the plaintiff in error became the *successor* of the old corporations and is responsible in this action.—(See Barnes vs. Dist. of Columbia, 1 Otto, 540; 1 Dillon on Municipal Corps., § 385; Hayden vs. Madison, 7 Greenf., 76; Abbott vs. Herman, Ibid., 118.)

The colored schools of Washington and Georgetown were as much a subject-matter of municipal care and government as were the public streets of those cities, and it is entirely immaterial whether the duties imposed upon the municipality were to be performed by agents elected by the people or appointed by the Secretary of the Interior or the governor of the District of Columbia. And it is equally immaterial whether such agents were called a board of public works or a board of trustees. This court,

in deciding a question which is not distinguishable from the question involved hered, used the following language:

"A municipal corporation may act through its mayor, through its common council, or its legislative department, by whatever name called, its superintendent of streets, commissioner of highways, or board of public works, provided the act is within the powers committed to its charge. Nor can it in principle be of the slightest consequence by what means these several officers are placed in their position—whether they are elected by the people of the municipality or appointed by the President or a governor." —(Barnes vs. District of Columbia, 91 U. S., 545.)

The cause of action in this case accrued to the plaintiff in June, 1872, more than a year after the abolition of the cities of Washington and Georgetown and the creation of the corporation which is now the plaintiff in error.

A change in the charter of a municipal corporation, in whole or part, by an amendment of its provisions, or the substitution of a new charter in place of the old one, embracing substantially the same corporations and the same territory, will not be deemed, in the absence of express legislative declaration otherwise, to affect the identity of the corporation, or to relieve it from its previous liabilities, although different powers are possessed under the amended or new charter, and different officers administer its affairs. —(Boughton vs. Pensacola, 93 U. S., 266; Milner vs. Pensacola, 2 Wood, 632.)

The judgment of the Supreme Court of the District of Columbia should by affirmed.

ENOCH TOTTEN,
Atty. for Deft. in Error.